

## Chapter 17.39 Storm System Discharges

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(Chapter replaced by Ordinance No. 184898; effective October 28, 2011.)

### 17.39.010 Intent.

The Bureau of Environmental Services (BES) is authorized to facilitate the development and management of the City's storm sewer and drainage system facilities to adequately convey, manage and protect the water quality of discharges of stormwater runoff. This Chapter applies to the City storm sewer and drainage systems as defined in this Chapter. This Chapter provides BES the authority to ensure these systems are operated in a manner that protects public health and the environment.

### 17.39.020 Definitions.

(Replaced by Ordinance No. 185397, effective July 6, 2012.) As used in Chapter 17.39:

- A. "Capacity" means the flow volume or rate that a specific facility (e.g., pipe, pond, vault, swale, ditch, or drywell) is designed to safely contain, receive, convey, reduce pollutants from, or infiltrate to meet a specific performance standard.
- B. "Clean Water Act (CWA)" is the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 et seq.).
- C. "Code of Federal Regulations (CFR)" means the codification of the general and permanent rules published in the Federal Register by the departments and agencies of the Federal Government.
- D. "Director" means the Director of the Bureau of Environmental Services or the Director's designee.
- E. "Discharge" means is any disposal, injection, dumping, spilling, pumping, emitting, emptying, leaching, leaking or placing of any material so that such material enters or is likely to enter a waterbody, groundwater or a public sewer and drainage system.
- F. "Discharge Authorization (DA)" means a written approval by the Director which prescribes certain requirements or restrictions for a discharge to the City sewer and drainage system.

**G. "Discharger"** means any person who causes or permits a direct or indirect discharge to the City sewer and drainage system.

**H. "Illicit Connection"** means any connection to the City's storm sewer and drainage system not approved by the City or not in compliance with a valid City permit.

**I. "Illicit Discharge"** means any discharge to the storm sewer and drainage system that is not composed entirely of stormwater and is not authorized under Sections 17.39.030 or 17.39.050.

**J. "Interference"** means a discharge that, alone or in conjunction with other discharges, inhibits or disrupts the normal operation of the City's storm sewer and drainage system or contributes to a violation of any requirement of the City's NPDES Municipal Separate Storm Sewer System Discharge Permit. This includes any increase in the magnitude or duration of a violation, any increase in cost due to damage to the system, and any requirement for specialized treatment of stormwater caused by such a discharge.

**K. "National Pollutant Discharge Elimination System (NPDES)"** means the Clean Water Act (40 CFR Part 122) regulations that require dischargers to control and reduce pollutants in discharges to waters of the United States.

**L. "Pollutant"** means an elemental or physical material that can be mobilized or dissolved by water or air and that could create a negative impact to human health, safety, or the environment. Pollutant discharges into the City storm and drainage system may be prohibited or limited by this Chapter or administrative rules.

**M. "Process Wastewater"** means any water which during manufacturing or processing comes into direct contact with or results from the production, use, or removal of raw material, intermediate product, finished product, by-product or waste product, including decant liquids.

**N. "Representative Sample"** means a sample that is collected by grab, composite or other technique that adequately reflects the quality of sediments or discharge for a specific area or entire site. Sampling shall be conducted in accordance with 40 CFR Part 136 or a method approved by EPA or BES.



O. "Storm Sewer and Drainage System" means a City conveyance or system of conveyances, including pipes, pumps, drainage ditches, constructed channels, groundwater-related disposal systems, underground injection control devices, stormwater management facilities, or storm drains, that is designed or used to collect and transport stormwater. "Storm sewer and drainage system" does not include natural streams, creeks, ponds, lakes, a combined sewer, or part of a Publicly Owned Treatment Works, as defined in 40 CFR 122.2.

P. "Stormwater" means water that originates as precipitation on a particular site, basin, or watershed.

Q. "Toxic Substance" means any chemical listed in Oregon's water quality standards for toxic pollutant tables in OAR, Division 340-041-033; the CWA effluent guidelines list of toxic pollutants at CFR 401.15; or the toxic chemical release reporting specific toxic chemical listings at 40 CFR 372.65 at concentrations specified in those lists or, if no concentration is specified, at concentrations determined pursuant to BES Storm and Drainage Discharge Rules.

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#### **17.39.030 Allowable Discharges.**

The following discharges are allowed to enter the City storm sewer and drainage system without notice to or authorization from the City unless required under administrative rules:

A. Stormwater that does not contain toxic substances and is not otherwise prohibited.

B. Non-stormwater discharges authorized by the City's Water Pollution Control Facility (WPCF) Class V Underground Injection Control (UIC) or NPDES Municipal Storm Sewer System (MS4) Discharge permit, except for those discharges subject to the use of BMPs by administrative rule.

C. Discharges that comply with a DA or permit issued by the Director or DEQ.

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#### **17.39.040 Prohibited Discharges.**

The following discharges to the City's storm sewer and drainage system are prohibited:

A. Any discharge in violation of the conditions of the discharger's NPDES or other permit or authorization.

**B. Any discharge that is intentionally routed to City UIC systems.**

**C. Any discharge with any of the following characteristics or materials:**

- 1. A pH outside the range of applicable water quality standards in OAR Division 340-041;**
- 2. A visible sheen;**
- 3. A visible discoloration including, but not limited to, those attributable to dyes and inks, except for non-toxic dyes used or approved by the City to investigate the potential source of an illicit connection;**
- 4. Heat that could damage or interfere with any element of the City's storm sewer and drainage system or that causes or contributes to a violation of the receiving-water temperature standards;**
- 5. Toxic substances at concentrations that cause or contribute to violations of in-stream water quality standards set by DEQ or that exceed remedial action goals defined in a DEQ or EPA Record of Decision for the protection of surface water or sediment;**
- 6. Refuse, rubbish, garbage, discarded or abandoned objects, articles, or accumulations of discharges that contain visible floating solids;**
- 7. A process wastewater, unless authorized to discharge under a DEQ permit;**
- 8. A volume that causes or contributes to an exceedance of the planned capacity of the storm sewer and drainage system, as established by the Director;**
- 9. Liquids, solids, or gases which, either alone or by interaction, could cause a fire or an explosion including: waste streams with a closed-cup flashpoint of less than 140 degrees Fahrenheit or 60 degrees Celsius (using test methods described by 40 CFR 261.21); or discharges which cause the**



atmosphere in any portion of the City's storm sewer and drainage system to reach a concentration of 10 percent or more of the Lower Explosive Limit per National Institute for Occupational Safety and Health standards;

10. A substance that causes or may cause a nuisance, hazard, interference, obstruction or damage to the City's storm sewer and drainage system, City personnel, the general public, receiving waters, or associated sediments; or

11. Any substance that causes or contributes to a violation of the terms of the City's NPDES MS4 Discharge Permit or Water Pollution Control Facility (WPCF) for Class V UIC Permit or in-stream water quality standards set by the State of Oregon.

**D. Existing Discharges.** Dischargers found to violate Section 17.39.040 may be required to obtain a discharge permit or authorization or the discharge may be terminated regardless of past acceptance by the City.

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#### **17.39.050 Notification and Control of Illicit Connections and Discharges.**

**A. Notification by telephone must be provided to BES and other authorities as applicable for the following conditions:**

1. **Illicit Connections.** Notice must be provided within twenty-four hours after discovery of an illicit connection to the City's storm sewer and drainage system.

2. **Illicit Discharges.** Notice must be provided immediately after discovery of the illicit discharge. Written reports must also be submitted to the City within five days of discovery of an illicit discharge or as otherwise specified by a permit or a discharge authorization.

**B. Control and Abatement.** Dischargers shall immediately take all reasonable steps to minimize the effects of an illicit discharge to the City storm sewer and drainage system or any waters of the state. These actions may include cleaning the impacted public and private system components under City direction or performing additional monitoring to determine the nature and extent of the discharge.

C. Protection of City Systems. Dischargers shall eliminate or control direct or indirect system entry points that have the potential to allow spills or discharges into the City's storm sewer and drainage system. The Director may require dischargers to make structural modifications to their facilities, equipment, or drainage systems or to take other measures to safeguard operation of the City's storm sewer and drainage system.

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#### **17.39.060 Discharge Permits and Other Authorizations.**

A. A City discharge authorization or City permit is required for un-permitted discharges that would otherwise cause interference with or harm the City storm sewer and drainage system, contribute to a violation of the City's NPDES stormwater discharge permit, degrade the local receiving surface water or groundwater, or have a negative effect on human health or the environment.

B. A City discharge authorization request must be submitted and approved before non-routine or one-time discharges of materials except for those discharges that are allowed under Section 17.39.030.

C. A City permit request must be submitted and BES must provide approval or denial of the permit before continuous or routine discharge occurs of materials other than stormwater that are not allowed under Section 17.39.030. A discharger must apply for a City permit when required by BES either at the time of development application or at the time of discovery of a discharge that requires a permit or authorization per Subsection 17.39.060 A.

D. The discharger may be required to allow site inspections by BES to verify site conditions or submit additional information, reports and plans as part of the DA or City permit request, such as:

1. A Stormwater Pollution Control Plan (SWPCP), which describes site actions taken to prevent contamination of stormwater by materials stored, used or manufactured onsite;
2. An Accidental Spill Prevention Plan (ASPP), which describes actions taken to prevent accidental or incidental spills of pollutants from entering the City storm sewer and drainage system; or
3. Monitoring data to characterize the types and loads of pollutants in the discharges.

E. The Director shall provide the discharger written notice of approval or denial of the request to discharge and information on how to request further administrative review of the decision.



F. Any new or potential discharger identified through the City's development review process shall undergo a source control review. Such review shall identify any site controls, City permit, or DA submittals needed to approve and accept any new discharge.

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### 17.39.070 Inspections.

A. Right of Entry. To the full extent permitted by the law, the City has authority to enter all private and public premises at any time for the purpose of inspecting sources of potential or actual discharges to the City's storm sewer and drainage system and to perform any other lawful act required by or authorized under this Code or ordinances of the City, the Charter, or state or federal law. This authorization includes but is not limited to inspection, sampling, testing, photographic documentation, record examination, copying, and installation of devices as necessary to conduct sampling, inspection, testing, monitoring and metering operations to determine compliance with the requirements of this Chapter. City representatives shall not be required to sign any type of confirmation, release, consent, acknowledgement or other type of agreement as a condition of entry.

### B. Conditions for Entry.

1. The City representative shall present appropriate credentials at the time of entry.
2. The City representative shall comply with routine safety and sanitary requirements of the facility or site to be inspected as provided by the facility operator at the time of entry. The facility operator shall provide the City representative with any facility-specific safety protective equipment necessary for entry.

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### 17.39.080 Sampling.

The City may sample or require a discharger to provide a representative sample of any discharge, or any material intended to be discharged, for the purposes of characterization or to determine compliance with Section 17.39.040, applicable permit conditions, DEQ or EPA requirements, or City permit or authorization.

A. Dischargers may submit monitoring data gathered for other purposes that also satisfies these requirements. Dischargers shall conduct sampling and analysis in accordance with 40 CFR Part 136 or other EPA- or BES-approved methods.



**B.** All dischargers with continuous or routine discharges must provide the City access to a sampling manhole or other City-approved location upstream of the physical connection or discharge point into the City system.

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#### **17.39.090 Reporting Requirements.**

**A. Reports.** Dischargers may be required to submit reports or other technical information needed to determine compliance with this Chapter. Such reports may include evaluations of site conditions, visual observations of discharges, discharge sampling results, summaries of operational and maintenance activities, compliance schedules for implementing remediation activities, or other information as requested by the Director to characterize discharges and site conditions. The City may accept reports required by NPDES or other discharge permits. Reports shall be submitted in a timely manner as required by the Director.

**B. Fraud and False Statements.** Dischargers making false statements in any submittal, report or other document required by this Chapter or associated rules shall be subject to the enforcement provisions of this Chapter and any other applicable local and state laws and regulations.

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#### **17.39.100 Records Retention.**

Dischargers subject to this Chapter shall maintain and preserve for no fewer than five years any records, books, documents, memoranda, reports, correspondence and document summaries relating to observation, sample collection and analysis conducted in order to comply with this Chapter or associated rules. All records that are the subject of any enforcement or litigation activities brought by the City shall be retained and preserved by the discharger until all enforcement activities have concluded and all periods of limitation with respect to any and all appeals have expired.

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#### **17.39.110 Enforcement.**

**A. Violations.** Dischargers failing to comply with the requirements of this Chapter and associated rules may be subject to enforcement actions by the Director. Violations of this Chapter and associated rules include, but are not limited to:

1. Discharges with any of the attributes of the prohibited discharge list of Section 17.39.040.

2. Failure to meet any requirement or condition of a discharge permit or authorization, including exceedances of a discharge limit, issued under the authority of this Chapter or associated rules.

3. Failure to comply with a permit or discharge authorization-related submittal schedule or a violation remediation schedule.



**4. Failure to pay review fees or assigned penalties for violations.**

**B. Civil Penalties.** Dischargers violating this Chapter or associated rules may be assessed civil penalties of up to \$5,000 per day per violation. All civil penalty payments shall be deposited with the City Treasurer. Penalties and other charges shall accrue interest from the date of initial City notice until the penalty is paid in full.

**C. City Summary Abatement.** A discharger who fails to correct any prohibited condition or to discontinue any prohibited activity may be subject to summary abatement by the City. In cases of imminent danger to human health, public safety, or the environment or continued noncompliance with City Code or associated rules, the Director may take any necessary action permitted by law to remedy the violation and remove the threat to public health and safety or the environment. Dischargers shall be solely responsible for paying the expenses incurred by the City in carrying out the abatement in conformance with this Chapter.

**D. Termination of a Permit or Discharge Authorization.** The Director may terminate a City-issued discharge permit or DA if, in the judgment of the Director:

1. The discharge has the potential to endanger human health, public safety or the environment or threatens to interfere with the operation of the City storm sewer and drainage system;
2. The NPDES permit, City permit or authorization was obtained by misrepresentation of any material fact or lack of full disclosure;
3. The discharger violates any requirement of this Chapter or the applicable discharge permit or authorization; or
4. The termination is directed by a court of competent jurisdiction.

The Director may reinstate discharge privileges based on confirmation that the discharge complies with this Chapter and associated rules and any outstanding penalties, fees or costs due the City have been paid.

**E. Cost Recovery.** The Director may recover all reasonable costs incurred by the City which are attributable to or associated with violations of this Chapter.

**F. Nothing in this Chapter shall be construed to impose liability on the City for any injury or damage resulting from the failure of any person to comply with the provisions of this Chapter.**

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### **17.39.120 Compliance Cases and Appeals.**

**A. City Code Compliance.** The City shall take all reasonable steps to resolve compliance issues including, but not limited to, the following:

- 1. Administrative Review.** Dischargers subjected to enforcement under this Chapter may request an administrative review of a decision of the Director. If the discharger makes no request within the timeframe specified in the City violation notice, the City shall issue a final determination.
- 2. Final Determination.** Dischargers who fail to comply with the terms of a BES final determination shall have violated this Chapter. The final determination shall be the basis for Code compliance proceedings before the City Code Hearings Officer pursuant to Title 22 of the City Code.
- 3. Code Compliance Hearings.** Dischargers shall receive notice of the deadlines and procedures for requesting a hearing with the City Code Hearings Officer. The Code Hearings Officer shall hear evidence from both the discharger and the City on whether the City followed established procedures for requiring compliance with this Chapter and associated rules. The Code Hearings Officer's decision is final.

**B. Discharger-Initiated Appeals.** Dischargers may initiate appeals to the Code Hearings Officer per City Code Title 22 only on the following issues:

- 1. Violation.** The discharger may appeal the determination of a violation of this Chapter or associated rules.
- 2. Enforcement Action.** The discharger may appeal the type of enforcement action taken by the



City.

3. Penalty. The discharger may appeal the type of penalty imposed by the City.

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**17.39.130 Conflict.**

All other ordinances and parts of other ordinances inconsistent or conflicting with any part of this Chapter are hereby repealed to the extent of such inconsistency or conflict.

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**17.39.140 Severability.**

If any provision, paragraph, word or section of this Chapter or in rules adopted hereunder is invalidated by any court of competent jurisdiction, the remaining provisions, paragraphs, words, and sections shall not be affected and shall continue in full force and effect.

